

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

CGI JOLIET, LLC, *et al.*,¹

Debtors.

Chapter 7

Case No. 17-18810

Hon. Pamela S. Hollis

**ORDER APPROVING BIDDING PROCEDURES
AND GRANTING RELATED RELIEF**

This matter coming to be heard on the motion (the “*Sale Motion*,” and all undefined terms herein having the meanings set forth in the Sale Motion) of Gregg E. Szilagyi, not individually, but in his capacity as chapter 7 trustee (the “*Trustee*”) of the bankruptcy estate (the “*Estate*”) of Raceway Central Downers Grove LLC (“*Raceway Downers*”), pursuant to sections 363(b) and (f) of title 11 of the United States Code (the “*Bankruptcy Code*”), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), for entry of orders: (i) authorizing the Trustee to enter into that certain *Purchase and Sale Agreement*, dated September 19, 2018 (the “*Sale Agreement*”) between the Trustee and DTS Properties, LLC (“*DTS*”), in connection with the sale of the real estate commonly known as 1212 75th Street, Downers Grove, Illinois, 60516 and certain additional real and personal property (collectively, the “*Property*”) as identified in the Sale Agreement; (ii) entering bidding procedures in connection with the sale of

¹ The Debtors in these Chapter 7 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are CGI Joliet, LLC (7014), Currency Express, Inc. (2650), Raceway Central, LLC (2161), Raceway Central Calumet Park LLC (2161), Raceway Central Chicago Heights LLC (2161), Raceway Central Downers Grove LLC (2161), Raceway Central Joliet North LLC (2161), Raceway Central LLC North Valpo (2161), and Raceway Central Wheaton LLC (2161).

the Property; (iii) setting a final hearing on the Sale Motion; (iv) authorizing the Trustee to sell the Property free and clear of all claims, liens and encumbrances; and (v) granting related relief;

THE COURT HEREBY FINDS AND DETERMINES THAT:²

A. The Trustee has articulated good and sufficient reasons for approval of the Bidding Procedures, and the Bidding Procedures are reasonable and appropriate to maximize the return on the Property.³

NOW, THEREFORE, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY:

1. The Sale Motion is hereby granted in part and to the limited extent provided herein.
2. The Sale Agreement is approved, and the Trustee is authorized to enter into the Sale Agreement and take all actions reasonably contemplated therein.
3. The Bidding Procedures set forth in Exhibit A attached hereto are incorporated into this Order and made a part hereof and are approved in all respects, including, but not limited to, the Break-Up Fee.
4. All persons or entities who submit a Qualified Bid for any of the Property shall be deemed to have read and understood the terms and conditions of the Bidding Procedures and shall comply with and be bound by such Bidding Procedures.
5. All objections to the Bidding Procedures that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled.

² Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate.

³ All capitalized terms not otherwise defined herein shall have the same meaning ascribed to such terms in the Sale Motion.

6. The notice of hearing and auction dates for the sale (the “*Sale*”) of the Property attached hereto as Exhibit B (the “*Sale Notice*”) is hereby approved and shall be served by the Trustee as provided further herein.

7. An auction (the “*Auction*”) for the Property shall take place on November 14, 2018 at 2:00 p.m. (Central) at the offices of Fox Rothschild LLP, 321 N. Clark St., Ste. 800, Chicago, IL 60654, or at such other time or place as the Trustee shall notify all Qualified Bidders.

8. At the Auction, the Trustee shall be entitled and is hereby authorized, subject to further order of this Court, to offer to sell the Property free and clear of all liens, claims, encumbrances and interests consistent with the terms and conditions set forth in the Sale Motion and the Bidding Procedures, with all such liens, claims, encumbrances, and interests to attach to the proceeds of the Property with the same extent, validity, priority, force and effect as applied against the Property.

9. The Court shall conduct a hearing to consider the approval of the Sale and the additional relief requested in the Sale Motion (the “*Final Hearing*”), on November 15, 2018, at 11:00 a.m. at the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, in Courtroom 644 in the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois, or such later time or other place as the Trustee shall notify all Qualified Bidders.

10. Pursuant to Bankruptcy Rules 2002(a) and 6004, the Trustee is hereby ordered and directed to serve a copy of the Sale Motion, Sale Notice and the Bidding Procedures to the following parties (each a “*Notice Recipient*”): (a) counsel for the United States Trustee, (b) all creditors of the Estate, (c) the Standard Parties (as defined in the Notice Procedures), (d) PJSC, (e) the Broker, (f) all parties who have requested notice in this case, and (g) all entities reasonably known by the Trustee to have an Interest in the Property to be sold, by regular mail, or by CM/ECF

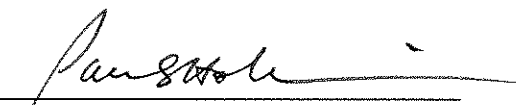
if such parties have appeared by counsel, no later than the third day after entry of this Order, and such manner of notice is hereby found to be adequate and sufficient notice of the relief sought in the Sale Motion.

11. Any Notice Recipient may obtain a copy of the Agreement, the Sale Motion and any Exhibits attached thereto upon request directed to counsel for the Trustee, Robert W. Glantz, Fox Rothschild LLP, 321 N. Clark St., Ste. 800, Chicago, Illinois 60654 (312-666-2835) (rglantz@foxrothschild.com).

Dated:

OCT 11 2018

ENTER:


UNITED STATES BANKRUPTCY JUDGE

This order prepared by:

David R. Doyle
Fox Rothschild LLP
321 N. Clark St., Ste. 800
Chicago, IL 60654
Tel.: 312-980-3864

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<i>In re:</i> CGI JOLIET, LLC, <i>et al.</i> , ¹ <i>Debtors.</i>	Chapter 7 Case No. 17-18810 Hon. Pamela S. Hollis
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**NOTICE OF AUCTION SALE AND
BIDDING PROCEDURES**

Gregg E. Szilagyi (the “*Seller*”), not individually, but in his capacity as chapter 7 trustee of the bankruptcy estate (the “*Estate*”) of Raceway Central Downers Grove LLC (“*Raceway Downers*”), currently pending as Case No. 17-18810 in the U.S. Bankruptcy Court for the Northern District of Illinois (the “*Bankruptcy Court*”), shall hold an auction for the sale of real estate commonly known as 1212 75th Street, Downers Grove, Illinois, 60516, as well as certain other related real and personal property (the “*Property*”). The following Bankruptcy Court-approved procedures (the “*Bidding Procedures*”) shall apply with respect to the sale of the Property at the auction.

The Auction

- i. The Seller shall hold an auction for the Property on **November 14, 2018 at 2:00 p.m. (CT)**, at the law offices of Fox Rothschild LLP, 321 North Clark Street, Suite 800, Chicago, Illinois 60613 (the “*Auction*”). At the Auction, the Seller shall conduct such Sale by open bidding, except that nothing shall prohibit the Seller at the Auction from conducting separate or joint discussions with DTS Properties, LLC (“*DTS*”), any Qualified Bidder (as defined below), any creditor, or any of their representatives in private and not on the record of such proceeding. A court reporter shall make a record of the bidding as it occurs.

Eligibility to Participate in the Auction

- ii. For any person wishing to participate in the Auction (each, a “*Potential Bidder*”), at or before 12:00 noon on **November 13, 2018**, such person must deliver to the Seller (a) such information as the Seller shall request establishing a Potential Bidder’s ability to close the Sale (as defined below) of the Property in a timely manner, including a demonstration of financial wherewithal to close such Sale; (b) a cashier’s or certified check payable to Seller in an amount equal to \$100,000.00; and (c) an executed purchase agreement in substantially

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the same form as that provided by DTS (the “*DTS Agreement*”) setting forth a purchase price at an amount exceeding \$2,650,000 by, or in excess of, the Overbid (as defined below) and any real estate broker’s commission that is payable in connection with such bid, in a form and substance acceptable to the Seller. Any Potential Bidder meeting all of the above requirements that wishes to participate in the Auction must attend the Auction and acknowledge in writing that it is familiar with, understands and accepts the procedures specified in these Bid Procedures. Any person qualifying under all of the above standards shall be entitled to bid to purchase the Property and will be hereinafter referred to as a “*Qualified Bidder*.” Any bid made by a Qualified Bidder by the Auction Date, that otherwise complies with these Bid Procedures shall be referred to as a “*Qualified Bid*.”

- iii. At the request of a Potential Bidder, counsel for the Seller will provide a digital copy of DTS Agreement to the Potential Bidder. Seller’s counsel is: Fox Rothschild LLP, Attn: Robert W. Glantz, 321 North Clark Street, Suite 800, Chicago, Illinois 60654; rglantz@foxrothschild.com; 312-666-2835.
- iv. If DTS is not in default under the terms of this Agreement, DTS shall be deemed a Qualified Bidder and entitled to participate as a Qualified Bidder at the Auction in the event a Qualified Bid is made by another Qualified Bidder. Seller shall provide DTS with a copy of the contract included as part of each Qualified Bid received from any Qualified Bidders as such Qualified Bids are received by Seller and, in any event, no later than 4:30 p.m. on the date prior to the Auction. Seller shall endeavor to provide DTS with any Qualified Bid within one (1) business day of receipt by Seller.
- v. The Sale of the Property shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Seller, its shareholders, or its agents. By submitting a bid, each Qualified Bidder shall be deemed to have acknowledged and represented that (i) it has had an opportunity to inspect and examine the Property and to conduct any and all due diligence regarding the Property prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property by any person whatsoever, or the completeness of any information provided in connection therewith or the Auction.

Inspection of Property

- vi. The Seller will grant reasonable access to the Property to any person expressing an interest in viewing the same for the purpose of making a bid thereon, and the Seller will further agree to make environmental, financial and such other information concerning the Property available to any Potential Bidder. The Seller shall require any Potential Bidder to enter into a confidentiality agreement, in form and substance reasonably acceptable to Seller, prior to the granting of access or dissemination of environmental, financial and other information to such Potential Bidder or his/her/its agents or representatives. DTS, without any representations or warranties whatsoever, shall make available to all Potential Bidders a copy of any and all environmental, inspection, soil and other reports independently

obtained by DTS relating to the physical condition of the Property prior to the Auction. DTS shall incur no liability whatsoever for providing such reports to the Potential Bidders.

Auction and Sale Procedures

- vii. Any opening competitive Qualified Bid at the Auction must exceed the Purchase Price by at least One Hundred Fifty Thousand Dollars (\$150,000.00) (the "**Overbid**"). Incremental bids after an opening competitive Qualified Bid must exceed the previous high bid by at least \$10,000.00. At the conclusion of the Auction, the Seller and its representatives will engage in an analysis (a "**Bid Analysis**") to determine which Qualified Bid is, in their collective best judgment, the highest or otherwise best offer(s) ("**Winning Bid**"). A person making a Winning Bid is hereinafter referred to as a "**Winning Bidder**."
- viii. The offers of all Qualified Bidders tendered at the Auction shall be irrevocable until the earlier of (i) the entry of an order approving the sale of the Property by the Court (a "**Sale Order**") or (ii) the withdrawal of the Property for sale by the Seller. Seller shall use its best efforts to have the Sale Order entered within seven (7) days of the Auction.
- ix. In the event that a Winning Bidder defaults in the performance of its obligation to purchase the Property pursuant to a Winning Bid, that person's Earnest Money shall be forfeited and shall be immediately transferred to the Seller. Any person making an Earnest Money deposit including DTS who does not become the Winning Bidder shall have its Earnest Money deposit returned within two (2) business days after the earlier of (i) the entry of the Sale Order or (ii) the withdrawal of the Property for sale by the Seller.
- x. On November 15, 2018, the Seller shall seek entry of an order by the Bankruptcy Court authorizing Seller to consummate the Sale (as defined below) of the Property upon the terms of the Winning Bid with the Winning Bidder, and to execute such additional documentation as is reasonably necessary to close such Sale (as defined below) upon the terms of the Winning Bid (the "**Sale Order**"). The Sale Order approving the sale pursuant to these Bidding Procedures (the "**Sale**") shall authorize and approve the transfer all of Seller's right, title and interest in and to the Property to the Winning Bidder and shall be free and clear of all liens, claims, encumbrances, and interests (unless otherwise agreed to by the Winning Bidder and Seller), with any such liens, claims, encumbrances, and interests attaching to the proceeds of the Sale (the "**Sale Proceeds**") in the same rank and priority as those liens, claims, encumbrances, and interests enjoyed prior to the Auction and Sale. Any and all liens, claims, encumbrances, and interests shall be paid from the Sale Proceeds pursuant to the Sale Order or the further order of the Bankruptcy Court.
- xi. In the event that a Winning Bidder defaults in the performance of its obligations to purchase the Property pursuant to a Winning Bid, then Seller may treat the next highest bidder for the Property as the Winning Bidder. Consequently, that person's bid (the "**Back-Up Bid**") will be treated as the Winning Bid, without further notice, hearing or entry of any additional order by the Bankruptcy Court. No bidder other than the Winning Bidder shall be bound in any way once the Seller determines the Winning Bidder and each other bidder shall be entitled to return of its Earnest Money on or before the fourteenth (14th) day after the

completion of the Auction or, if sooner, within two (2) business days after the entry of the Sale Order.

Break-Up Fee or Sale to DTS

- xii. In consideration of the costs that DTS has incurred and will incur in connection with the negotiation of this Agreement and the contemplated due diligence and the obligation of Seller to maximize the value of the Property through the Auction process, Seller shall pay DTS a cash break-up fee in the amount of the lesser of (a) DTS's actual out of pocket fees and expenses related to the transaction described in this Agreement and (b) One Hundred Thousand Dollars (\$100,000.00) (the "**Break-Up Fee**") as an allowed administrative priority claim, which shall be carved-out from any lien upon the proceeds of the Sale, if a Winning Bidder other than DTS shall acquire the Property under competitive bidding as described herein. The Break-Up Fee shall be paid to DTS at closing of the Sale from the proceeds of the Sale of the Property, free and clear of all liens, claims, encumbrances, and interests. However, if DTS acquires the Property, DTS shall not be entitled to payment of the Break-Up Fee. If DTS acquires the Property, the price set forth in the Winning Bid shall thereafter be and constitute the Purchase Price pursuant to this Agreement.
- xiii. In the event Seller withdraws the Property and DTS is not then in default of the DTS Agreement, DTS shall be reimbursed for its actual, out-of-pocket costs incurred relating to the negotiation of the DTS Agreement and any due diligence performed regarding the Property, in an amount no greater than the Break-Up Fee.
- xiv. If as of the Auction Date there are no Qualified Bidders other than DTS, the Seller shall be obligated to sell the Property pursuant to the terms and conditions of the DTS Agreement without further extension or delay.

EXHIBIT B

